



Bankruptcy Department

June 27, 2016

NOTICE TO CLIENTS AND FRIENDS

H.R. 5278, the Puerto Rico Oversight, Management, and E6 Economic Stability Act (May 2016)

This month's Legislative Update features a summary of the provisions found in the Puerto Rico Oversight, Management and Economic Stability Act (PROMESA), passed by the House on June 9 by a bipartisan vote of 297-127. The bill, which allows a seven-member board to oversee negotiations with creditors and file a restructuring plan in court to reduce Puerto Rico's debt, now heads to the Senate, which is expected to deliver its vote sometime this summer. Puerto Rico's representative in Congress, Pedro Pierluisi, supports the bill despite opposition from other lawmakers on the island.

The urgency for PROMESA increased on June 13, when the U.S. Supreme Court rejected an effort to allow public utilities to restructure \$20 billion in debt, under a local law passed in 2014. (*Puerto Rico v. Franklin California Tax-Free Trust*, No. 15-233, and *Acosta-Febo v. Franklin California Tax-Free Trust*, No. 15-255.) Justice Clarence Thomas, writing for the 5-2 majority, said that the law was at odds with the Bankruptcy Code, which bars states and lower units of government from enacting their own versions of bankruptcy law. Puerto Rico argued that it needed to restructure at least some of its \$70 billion in public debts. Since it is excluded from chapter 9, the island tried to enact its own version of a bankruptcy law. That attempt, called the Recovery Act, was challenged by utility creditors. They argue that the Bankruptcy Code pre-empted it. The justices agreed. The federal law, Justice Thomas wrote, "bars Puerto Rico from enacting its own municipal bankruptcy scheme to restructure the debt of its insolvent public utilities." Chief Justice John Roberts and Justices Anthony Kennedy, Stephen Breyer and Elena Kagan joined him. Justice Thomas wrote that the decision was compelled by a straight forward reading of the federal law.

In dissent, Justice Sonia Sotomayor, joined by Justice Ruth Bader Ginsburg, said that the majority's approach was too mechanical and failed to take into account the purpose of the bankruptcy law and the impact of its decision. The Recovery Act, she wrote, "is the only existing legal option for Puerto Rico to restructure debts."

Thanks go to **Sonia Colón**, chair of the Bankruptcy and Creditors' Rights Department of

Ferraiuoli, LLC, for the content of this chart. For more news and analysis, visit ABI’s “Puerto Rico in Distress” webpage at abi.org/PR-crisis.

Provisions of HR 5278: The Puerto Rico Oversight, Management and Stability Act (as passed)

Supremacy (§ 4)	<ul style="list-style-type: none"> The provisions of the Act shall prevail over any Commonwealth law or regulation that is inconsistent with it.
Purpose (§ 101)	<ul style="list-style-type: none"> The purpose of the Act is to provide a method for the Commonwealth to achieve fiscal responsibility and access to the capital markets.
Oversight (§ 101(d))	<ul style="list-style-type: none"> The Oversight Board (hereinafter “the board”) may require the governor to submit budgets and monthly reports regarding its instrumentalities. The board may require, in its sole discretion, the governor to include an instrumentality in the territory fiscal plan.
101(e): Board Composition	<ul style="list-style-type: none"> The board shall consist of seven members appointed by the President. The board will be composed of two members selected from the list submitted by the Speaker of the House of Representatives; two members selected from the list submitted by the Senate Majority Leader; one member selected from the list submitted by the Minority Leader of the House of Representatives; and one member selected from the list submitted by the Senate Minority Leader. In designating these members, the Act has divided them into categories of members appointed by the President, namely A, B, C, D, E and F. The categories relate to who proposed them — e.g., Speaker of the House (Categories A and B), Senate Majority Leader (Category C), House Minority Leader (Category D), Senate Minority Leader (Category E) and the President’s sole discretion (Category F). Note that the Category A member shall maintain a primary residence in the territory or have a primary place of business in the territory. For Categories A-E, the appointments shall be by and with the <i>Senate’s advice and consent</i>, unless the President appoints an individual from a list, as provided in this subsection, in which case no Senate confirmation is required. In the <i>event of vacancy</i>, the corresponding congressional leader shall submit a list within a timely manner of the board member’s resignation or removal being effective. The Act provides that the governor shall be an <i>ex officio</i> member of the board without voting rights. Each member shall be appointed for three-year terms, but may be reappointed. The president may remove a member for
101(f): Eligibility for Appointments	<ul style="list-style-type: none"> The Act excludes officers, elected officials or employees of the Commonwealth’s government, a candidate for elected office of the territorial government or a former elected official of the territorial government. <i>A board member cannot be an officer, former elected official or candidate for elected office or employee of Puerto Rico’s government. Basically, the member cannot be a public employee of the government of Puerto Rico prior to the appointment.</i>
101(h): Bylaws for Conducting Business of Oversight Board	<ul style="list-style-type: none"> As soon as practicable after the appointment of all members and appointment of the chair, the board shall adopt bylaws, rules and procedures governing its activities under this Act, including procedures for hiring experts and consultants. Under the bylaws which will be adopted, the board may conduct its operations under such procedures as it considers appropriate, except that an affirmative vote of a majority
103: Executive Director and Staff of Oversight Board	<p>The Act provides for the appointment of a revitalization coordinator. Personnel may include private citizens, employees of the federal government or employees of the territorial government. The executive director and staff of the board may be appointed and paid without regard to any provision of the laws of the Commonwealth or the federal government governing appointments and salaries, or procurement laws.</p>
104: Powers of the Board	<ul style="list-style-type: none"> The board may hold hearings, take testimony and receive evidence as it considers appropriate. It may also obtain official data from the federal government and the Commonwealth’s government. The board may request from and make publicly available to any other creditor participating in voluntary negotiation, the name and address of the creditor or of each member of an organized group of creditors, and the nature and aggregate amount of claims or other economic interests held in relation to the issuer as of the later of (1) the date that the creditor acquired the claims or other economic interests or, in the case of an organized group of creditors, the date the group was formed; or (2) the date that the board was formed. The Act also grants the board subpoena power. The board has jurisdiction to compel the attendance of witnesses and the production of materials. If a person refuses to obey a subpoena, the board may apply to the Commonwealth’s court of first instance. Failure to obey the court order may be punished by the court in accordance with civil contempt laws of the Commonwealth. The subpoena shall be served in the manner provided by the Commonwealth’s Rules of Civil Procedure. The board shall issue a <i>voluntary agreement certification</i> if it determines, in its sole discretion, that the territory or territorial instrumentality has successfully reached a voluntary agreement with holders of its bond claims to restructure such bond claims. The Act provides that any voluntary agreements that the Commonwealth or any of its instrumentality has executed with holders of its debts to restructure such debts prior to the Act’s enactment date shall be deemed to be in conformance with the requirements of this subsection, to the extent that the requirements of paragraph (2) have been satisfied, which requires that the board issues a voluntary agreement certification, and that (1) the agreement of a majority in amount of the bond claims that is to be affected by such agreement; or (2) confirmation of an adjustment plan pursuant to § 314 of this Act or the entry of an order approving a qualifying modification pursuant to § 601(m). The board may certify an adjustment plan only if it determines, in its sole discretion, that it is consistent with the applicable certified fiscal plan. The board may, in consultation with the governor, ensure the prompt and efficient payment and administration of taxes through the adoption of electronic reporting, payment and auditing technologies. Upon the board’s request, the administrator of General Services shall promptly provide to the board, on a reimbursable or non-reimbursable basis, the administrative support services necessary for the board to carry out its responsibilities under this Act. The board may investigate the disclosure and selling practices related to the purchase of bonds issued by the Commonwealth for or on behalf of any investor.
107: Budget and Funding for Board Operation	<ul style="list-style-type: none"> The board shall use its powers with respect to the territory budget of the covered territory to ensure that sufficient funds are available to cover all board expenses. Within 30 days after the date of enactment of this Act, the Commonwealth’s government shall designate a dedicated funding source, not subject to subsequent legislative appropriations, sufficient to support the annual expenses of the board as determined in the board’s sole and exclusive discretion.
108: Autonomy of Oversight Board	<ul style="list-style-type: none"> Neither the Governor nor the legislature shall have the power to enact, implement or enforce any statute, resolution, policy or rule that would impair or defeat the purposes of this Act.
108: Legal Representation	<ul style="list-style-type: none"> In any action brought by or on behalf of the board, the board shall be represented by such counsel as it may hire or retain so long as no conflict of interest exists.

109: Ethics	<ul style="list-style-type: none"> Members and staff of the board shall be subject to the federal conflict-of-interest requirements described in § 208 of title 18, U.S. Code. Members and staff of the board shall be subject to disclosure of their financial interests, the contents of which shall conform to the same requirements set forth in § 102 of the Ethics in Government Act of 1978 (5 U.S.C. app.).
201: Approval of Fiscal Plans	<ul style="list-style-type: none"> As soon as practicable after all of the members and the chair have been appointed, the board shall deliver a notice to the governor providing a schedule for the process of development, submission, approval and certification of fiscal plans. A fiscal plan developed shall endeavor to provide a method to achieve fiscal responsibility and access to the capital markets, and provide for estimates of revenues and expenditures in conformance with agreed-upon accounting standards, and be based on applicable laws or specific bills that require enactment in order to reasonably achieve the projections of the fiscal plan. The board shall ensure that assets, funds or resources of a instrumentality are not loaned to, transferred to or otherwise used for the benefit of the Commonwealth or an instrumentality, unless permitted by the Constitution or agreed to by a certified voluntary agreement under § 104(i), an approved adjustment plan under title III, or a qualifying modification approved under title VI; and respect the relative lawful priorities or lawful liens, as may be applicable, in the Constitution, other laws or agreements in effect prior to the date of enactment of this Act.
202: Approval of Budgets	<ul style="list-style-type: none"> The board shall deliver a notice to the governor and legislature providing a schedule for developing, submitting, approving and certifying budgets for a period of not less than one fiscal year following the fiscal year in which the notice is delivered. If the governor develops an instrumentality budget that is a compliant budget by the day before the first day of the fiscal year for which the instrumentality budget is being developed, the Oversight Board shall issue a compliance certification to the governor for such budget.
203: Effect of Finding of Noncompliance with Budget	<ul style="list-style-type: none"> Within 15 days from the last day of each quarter, the governor shall submit to the board a report with the actual cash revenues, cash expenditures and cash flows from the preceding quarter as compared with the projected revenues, expenditures and cash flows included in the certified budget for such preceding quarter. If the board determines that such information is not consistent with the certified budget for such quarter, the board shall require the Commonwealth to provide additional information and (2) correct the inconsistency by taking remedial action. If the board determines that the governor and legislature have failed to correct the inconsistencies identified by the board, the board shall (1) make appropriate reductions in nondebt expenditures to ensure that the actual quarterly revenues and expenditures are in compliance with the certified budget; (2) institute automatic hiring freezes; (3) prohibit the Commonwealth from entering into any contract or engaging in any financial or other transactions, unless the contract or transaction was previously approved by the board.
204: Review of Activities to Ensure Compliance with Fiscal Plan	The Act includes restrictions on budgetary adjustments. It specifically states that the legislature shall not adopt a reprogramming, and no officer or employee of the territorial government may carry out any reprogramming, until the Oversight Board has provided the legislature with an analysis that certifies that such reprogramming will not be inconsistent with the fiscal plan and Budget. Further, it provides that during the period prior to the appointment of all members and the chair of the Oversight Board, the Commonwealth shall not enact new laws that either permit the transfer of any funds or assets outside the ordinary course of business or that are inconsistent with the Constitution or laws of the territory as of the date of enactment of this Act, provided that any executive or legislative action authorizing the movement of funds or assets during this time period may be subject to review and reversal by the board upon appointment of the board's full membership.
205: Financial Stability and Management Responsibility	<ul style="list-style-type: none"> The Oversight Board may, at any time, submit recommendations to the governor or legislature, including recommendations relating to modifications of the types of services that are delivered by entities other than the Commonwealth government under alternative service delivery mechanisms, and the privatization and commercialization of entities within the territorial government.
206: Oversight Board Duties Related to Restructuring	<ul style="list-style-type: none"> Prior to issuing a restructuring certification regarding an entity, the Oversight Board shall determine, in its sole discretion, that (1) the entity has made good-faith efforts to reach a consensual restructuring with creditors; and (2) the entity has adopted procedures necessary to deliver timely audited financial statements, and made public draft financial statements and other information sufficient for any interested person to make an informed decision with respect to a restructuring. The issuance of a restructuring certification under this section requires a vote of no fewer than five board members in the affirmative, which shall satisfy the requirement set forth in § 302(2) of this Act.
207: Debt Issuance	<ul style="list-style-type: none"> During the operations of the board, the Commonwealth or its instrumentalities may not, without the board's approval, issue debt or guarantee, exchange, modify, repurchase, redeem or enter into similar transactions with respect to its debt.
208: Required Reports	<ul style="list-style-type: none"> The board shall submit to the President, Congress, the governor and the legislature, a report no later than 30 days after the end of the fiscal year, describing (1) the progress made in meeting objectives, (2) the assistance given by the board and (3) recommendations to the President and Congress on changes to the Act or other federal laws, that may assist the Commonwealth in complying with the certified fiscal plan. The board shall report, when feasible, on the amount of cash flow available for the payment of debt service.
209: Termination of Oversight Board	<ul style="list-style-type: none"> The board shall terminate upon certification that the Commonwealth has adequate access to short- and long-term markets at reasonable rates; and (1) for at least four years, the Commonwealth has developed its budget in accordance with modified accrual standards; and (2) that the expenditures made did not exceed the revenues.
210: No Full Faith and Credit of U.S.	<ul style="list-style-type: none"> The full faith and credit of the U.S. is not pledged for the payment of any principal or of interest on any bond, note or other obligation issued by the Commonwealth or its instrumentalities.
211: Analysis of Pensions	<ul style="list-style-type: none"> If the Oversight Board determines, in its sole discretion, that a pension system of the territorial government is materially underfunded, the board shall conduct an analysis prepared by an independent actuary of such pension system to assist the Oversight Board in evaluating the fiscal and economic impact of the pension cash flows. An analysis conducted under subsection (a) shall include an actuarial study of the pension liabilities and funding strategy that includes a forward-looking projection of pay-
212: Intervention in Litigation	<ul style="list-style-type: none"> The board may intervene in any litigation filed against the Commonwealth or its instrumentalities. If the board intervenes in litigation, the board may seek injunctive relief, including a stay of litigation.
301: Applicability of Other Laws	<ul style="list-style-type: none"> The section includes new definitions for holder of a claim or interest, insured bond and "trustee" (which, when used in a section of title 11, U.S. Code, means the board).
302: Who May Be a Debtor	<ul style="list-style-type: none"> Puerto Rico entities are considered debtors if (1) a territory that has requested the establishment of an Oversight Board or has had a board established for it by the U.S. Congress; (2) a covered territorial instrumentality of a territory; (3) the Oversight Board has issued a restructuring certification under § 206(b) for such entity; and (4) the entity desires to effect a plan to adjust its debts. Issuance of Restructuring Certificate: Puerto Rico completed the process set forth in Title VI; the entity has adopted procedures necessary to deliver audited financial statements; the entity has adopted or is subject to a certified fiscal plan; the entity is insolvent; and appropriate consideration is given to the relative priority of claims as established by law so that no one group or class of creditors gain an advantage that did not exist prior to the Oversight Board's determination. At least five of the seven members of the Oversight Board approve.
303: Reservation of Territorial Power to Control Territory and Territorial Instrumentalities	The Act provides that it does not limit or impair the power of a covered territory to control, by legislation or otherwise, the territory or any of its instrumentalities in the exercise of its political or governmental powers, including expenditures for such exercise, whether or not a case has been or can be commenced under this title, but <ul style="list-style-type: none"> (1) a territory law prescribing a method of composition of indebtedness or a moratorium law, may not bind any creditor of the Commonwealth or instrumentality that does not consent to the composition or moratorium; (2) a judgment entered under any law described in the previous paragraph may not bind a creditor that does not consent to the composition; and (3) Unlawful executive orders that alter, amend or modify rights of holders of any debt of the territory or territorial instrumentality, or that divert funds from one territorial instrumentality to another or to the territory, shall be pre-empted by this Act.

304: Petition and Proceedings Relating to Petition	<ul style="list-style-type: none"> • The board, on behalf of debtors, may file petitions or submit or modify adjustment plans jointly if the debtors are affiliates, provided, however, that nothing in this title shall be construed as authorizing substantive consolidation of the cases of affiliated debtors. • If the board, on behalf of a debtor and one or more affiliates, has filed separate cases and the board, on behalf of the debtor or one of the affiliates, files a motion to administer the cases jointly, the court may order a joint administration of the cases. • The Act provides that it may not be construed to permit the discharge of obligations arising under federal police or regulatory laws, including laws relating to the environment, public health or safety or territorial laws implementing such federal legal provisions. This includes compliance obligations, requirements under consent decrees or judicial orders, and obligations to pay associated administrative, civil or other penalties. • The Act specifically states that nothing in this section shall prevent the holder of a claim from voting on or consenting to a proposed modification of such claim.
306 and 307: Jurisdiction and Venue	<ul style="list-style-type: none"> • The district courts shall have original and exclusive jurisdiction of all cases under this title; except in those cases where an Act of Congress confers exclusive jurisdiction on a court or courts other than the district courts. • The district court, in which a case under this title is commenced or is pending, shall have exclusive jurisdiction of all property, wherever located, of the debtor as of the commencement of the case. • The district court in which a case under this title is pending shall have personal jurisdiction over any person or entity. • A party may remove any claim or cause of action in a civil action, other than a proceeding before the U.S. tax court or a civil action by a governmental unit to enforce the police or regulatory power of the governmental unit, to the district court for the district in which the civil action is pending, if the district court has jurisdiction of the claim or cause of action under this section. • The district court to which the claim or cause of action is removed may remand the claim or cause of action on any equitable ground. • A district court shall transfer any civil proceeding arising under this title, or arising in or related to a case under this title, to the district in which the case under this title is pending. • An appeal shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district court.
308: Selection of a Presiding Judge	<ul style="list-style-type: none"> • For cases in which the debtor is the Commonwealth, the Chief Justice of the United States shall designate a district court judge to sit by designation to conduct the case. • For cases in which the debtor is not the Commonwealth, and no motion for joint administration of the debtor's case with the case of the Commonwealth has been filed, the chief judge of the court of appeals for the circuit shall designate a district court judge to conduct the case.
309: Abstention	<ul style="list-style-type: none"> • Nothing in this title prevents a district court in the interests of justice from abstaining from hearing a particular proceeding arising in or related to a case under this title.
310: Applicable Rules of Procedure	<ul style="list-style-type: none"> • The Federal Rules of Court Procedure shall apply to a case under the title and to all civil proceedings arising in or related to cases. • The Oversight Board may take any action necessary on behalf of the debtor to prosecute the case of the debtor. • The Oversight Board is the only one that can, after the issuance of a certificate pursuant to § 104(j) of this Act, file an adjustment plan of the debts of the debtor. • If the Oversight Board does not file an adjustment plan with the petition, the board shall file an adjustment plan at the time set by the court.
311: Leases	<ul style="list-style-type: none"> • The Act provides that a lease to the Commonwealth or its instrumentalities shall not be treated as an executory contract or unexpired lease for purposes of § 365 or 502(b)(6) of the Bankruptcy Code, solely because the lease is subject to termination in the event that the Commonwealth fails to appropriate rent.
312: Filing an Adjustment Plan	<ul style="list-style-type: none"> • The board is the only entity that may file an adjustment plan of debts. • If it does not file the plan with the petition, the board shall file the same at the time set by court.
313: Modification	<ul style="list-style-type: none"> • The Board may modify the plan at any time before confirmation.
314: Confirmation	<ul style="list-style-type: none"> • For confirmation purposes, the plan shall be feasible and in the best interests of creditors, which shall require the court to consider whether available remedies under the nonbankruptcy laws and constitution of the Commonwealth would result in a greater recovery for the creditors than is provided by such plan; and be consistent with the applicable fiscal plan. • Although the Act incorporates the requirements of § 1129(a) of the Bankruptcy Code, it states that if a case includes only one class of impaired claims that has not accepted the plan, the
315: Role and Capacity of the Board	<ul style="list-style-type: none"> • The board may take any action necessary to prosecute the case including (1) filing the petition, (2) submitting or modifying an adjustment plan and (3) submitting filings in relation to the case with the court. The board is the representative of the debtor.
316: Compensation of Professionals	<ul style="list-style-type: none"> • After notice to the parties in interest and the U.S. Trustee and a hearing, the court may award to a professional person employed by the debtor (in the debtor's sole discretion), the Oversight Board (in the board's sole discretion), a committee under § 1103 of title 11, U.S. Code, or a trustee appointed by the court under § 926 of title 11, U.S. Code — <ol style="list-style-type: none"> 1. Reasonable compensation for actual, necessary services rendered by the professional person, or attorney and by any paraprofessional person employed by any such person; and 2. Reimbursement for actual, necessary expenses. • The court may, on its own motion or on the motion of the U.S. Trustee or any other party-in-interest, award compensation that is less than the amount of compensation that is requested.
317: Interim Compensation	<ul style="list-style-type: none"> • A debtor's attorney, or any professional person employed by the debtor (in the debtor's sole discretion), the Oversight Board (in the board's sole discretion), a committee under § 1103 of title 11, U.S. Code, or a trustee appointed by the court under § 926 of title 11, U.S. Code, may apply to the court not more than once every 120 days after an order for relief in a case under this chapter, or more often if the court permits, for such compensation for services rendered before the date of such an application or reimbursement for expenses incurred before such date as is provided under § 316.
401: Rules of Construction	<p>Nothing in the Act is intended or may be construed (1) to limit Congress's authority to exercise legislative authority over the territories pursuant to Article IV, § 3 of the U.S. Constitution; or (2) to authorize the application of § 104(e) of this Act (relating to issuance of subpoenas) to judicial officers or employees of territory courts.</p>
402: Right to Determine Future Political Status	<ul style="list-style-type: none"> • The Act does not restrict the Commonwealth's right to determine its future political status, including conducting a plebiscite.
403: First Minimum Wage in Puerto Rico	<ul style="list-style-type: none"> • Section 6(g) of the Fair Labor Standards Act of 1938 (29 U.S.C. § 206(g)) is amended to allow the governor of Puerto Rico, subject to the approval of the board, to designate a time period not to exceed four years during which employers in Puerto Rico may pay employees who are initially employed after the date of enactment of such Act a subminimum wage, which is not less than \$4.25 an hour. • The Act allows employers to pay said subminimum wage for 90 days for employees under the age of
404: Application of Regulation to Puerto Rico	<ul style="list-style-type: none"> • The Act excepts the Commonwealth from any regulations proposed by the Secretary of Labor relating to exemptions regarding the rates of pay for executive, administrative, professional, outside sales and computer employees, and published in a notice in the <i>Federal Register</i> on July 6, 2015, and any final regulations issued related to such notice.

405: Automatic Stay upon Enactment	<ul style="list-style-type: none"> • The Act provides that the automatic stay is not operable with respect to the commencement or continuation of an action or proceeding by a governmental unit to enforce a governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment. • The Act provides for an automatic stay until the later of (1) Feb. 15, 2017, or (2) six months after the establishment of an Oversight Board for the Commonwealth. • The Act provides for 75-day extension if the Oversight Board delivers a certification to the governor that, in the board's sole discretion, an additional 75 days is needed to seek to complete a voluntary process under title VI of this Act with respect to the Commonwealth or its instrumentalities. • The automatic stay can also be extended for 60 days if the district court to which an application has been submitted under subparagraph 601(l)(1)(D) determines, in the exercise of the court's equitable powers, that the additional period is needed to complete a voluntary process. • The Act provides for the ability to seek relief from stay. In that case, the U.S. District Court for the District of Puerto Rico shall have original and exclusive jurisdiction of any civil actions arising under or related to this section. On motion of or action filed by a party-in-interest and after notice and a hearing, the U.S. district court shall grant relief from the stay if cause is shown. • Further, the stay is terminated 45 days after relief is requested unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of a final hearing. • The Act provides that any order, judgment or decree entered in violation of this section and any act taken in violation of the automatic stay is void, and shall have no force or effect, and any person found to violate this section may be liable for damages, costs and attorneys' fees incurred in defending any action taken in violation of this section, and the Oversight Board or government of Puerto Rico may seek an order from the court enforcing the provisions of this section. • As long as the automatic stay is in effect, counterparty to a contract for the provision of goods and services shall continue to perform all obligations under, and comply with the terms of, such contract provided that the Commonwealth is not in default under such contract other than as a result of a condition of insolvency. • To the extent that the Oversight Board, in its sole discretion, determines that it is feasible, the government of Puerto Rico shall make interest payments on outstanding indebtedness when such payments become due during the length of the stay. • It is important to note that in subsection (m), Congress makes various findings for the imposition of an automatic stay, including a combination of severe economic decline accumulated operating deficits, lack of financial transparency, management inefficiencies and excessive borrowing, which have created a fiscal emergency in Puerto Rico. As such, an immediate — but temporary — stay is essential to stabilize the region for the purposes of resolving the crisis.
406: Purchases by Territory Governments	<ul style="list-style-type: none"> • Amends the text of § 1469e of title 48, U.S. Code, to allow the Commonwealth to make purchases through the General Services Administration.
407: Protection from Interdebtor Transfers	<ul style="list-style-type: none"> • The Act provides new protection of creditors. In particular, it provides that if any property of the Commonwealth is transferred in violation of applicable law under which any creditor has a valid pledge of, security interest in or lien on such property, or which deprives any such territorial instrumentality of property in violation of applicable law assuring the transfer of such property to such territorial instrumentality for the benefit of its creditors, then the transferee shall be liable for the value of such property. • In such case, a creditor may enforce its rights under this section by bringing an action in the U.S. District Court for the District of Puerto Rico after the expiration or lifting of the automatic stay.
408: GAO Report on Small Business Administration Programs in Puerto Rico	<ul style="list-style-type: none"> • Section 15 of the Small Business Act (15 U.S.C. § 644) is amended by providing that not later than 180 days after the date of enactment of this subsection, the U.S. comptroller general shall submit to the Committee on Small Business of the House of Representatives and the Committee on Small Business and Entrepreneurship of the Senate, a report on the application and utilization of contracting activities of the administration (including contracting activities relating to HUBZone small-business concerns) in Puerto Rico. The report shall also identify any provisions of federal law that may create an obstacle to the efficient implementation of such contracting activities.
409: Congressional Task Force on Economic Growth in Puerto Rico	<ul style="list-style-type: none"> • The Act provides for the establishment within the legislative branch a congressional task force on economic growth in Puerto Rico. The task force shall be composed of eight members, two of which will be members of the House of Representatives, appointed by the Speaker of the House; two members of the House, appointed by the House Minority Leader; two members of the Senate, appointed by the Senate Majority Leader; and two members of the Senate, appointed by the Senate Minority Leader. • All appointments to the task force shall be made not later than 30 days after the date of enactment of this Act. • Not later than Dec. 31, 2016, the task force shall issue a report of its findings to the House and Senate regarding <ol style="list-style-type: none"> 1. Impediments in current federal law and programs to economic growth in Puerto Rico; 2. Recommended changes to federal law and programs that, if adopted, would serve to spur sustainable long-term economic growth, job creation and attract investment in Puerto Rico; and 3. Additional information that the task force deems appropriate. • In carrying out its duties, the task force shall consult with the Puerto Rico Legislative Assembly, the Puerto Rico Department of Economic Development and Commerce, and the private sector of Puerto Rico. • The task force shall terminate upon issuing the report required.
501: Definitions	<ul style="list-style-type: none"> • The Act defines a new term, specifically "project sponsor," which means a Puerto Rico Agency or private party proposing the development of an existing, ongoing or new infrastructure project or energy project.
502: Position of the Revitalization Coordinator	<ul style="list-style-type: none"> • The Act provides for the appointment of a revitalization coordinator from the nominees submitted by the Oversight Board within 60 days of the appointment. • The coordinator shall have substantial knowledge and expertise in the planning, predevelopment, financing and development, operations, engineering or market participation of infrastructure projects, provided that stronger consideration shall be given to candidates who have experience with energy projects and the laws and regulations of Puerto Rico whose implementation could be affected by an expedited permitting process. • The position shall terminate upon the termination of the board.
503(a): Critical Projects	<ul style="list-style-type: none"> • The Act includes additional considerations such as, the cost of the project and amount of Puerto Rico government funds (if any) that are necessary to complete and maintain the project; the environmental and economic benefits provided by the project, including the number of jobs to be created that will be held by residents of Puerto Rico and the expected economic impact, including the impact on ratepayers, if applicable; and the status of the project (if it is existing or ongoing). • The Act also provides that critical projects shall be prioritized to the maximum extent possible in each Puerto Rico agency regardless of any agreements transferring or delegating permitting authority to any other territorial instrumentality or municipality.
503(b): Critical Project Report	<ul style="list-style-type: none"> • The Act includes additional provisions, such as if the governor fails to provide a recommendation during the development of the critical project report, the failure shall constitute a concurrence with the revitalization coordinator's recommendation. • In the case of a project that may affect the implementation of land-use plans (as defined by Puerto Rico Act 550-2004), a determination by the planning board will be required within the 60-day time frame. If the planning board determines that such a project will be inconsistent with relevant land-use plans, then the project will be deemed ineligible for critical project designation. • In the case of an energy project that will connect with the Puerto Rico Electric Power Authority's transmission or distribution facilities, a recommendation by the Energy Commission of Puerto Rico if the Energy Commission determines that such an energy project will affect an approved integrated resource plan, as defined under Puerto Rico Act 54-2014. If the Energy Commission determines the energy project will adversely affect an approved integrated resource plan, then the Energy Commission shall provide the reasons for such a determination and the energy project shall be ineligible for critical project designation, provided that such determination must be made during the 60-day time frame for the development of the critical project. • A recommendation by the revitalization coordinator on whether the project should be considered a critical project. • Public involvement: Immediately following the completion of the critical project report, the revitalization coordinator shall make such critical project report public and allow a period of 30 days for the submission of comments by residents of Puerto Rico. The revitalization coordinator shall respond to the comments within 30 days of closing the coming period and make the responses publicly available.

504: Miscellaneous Provisions	<ul style="list-style-type: none"> With respect to a Puerto Rico agency's activities related only to a critical project, such Puerto Rico agency shall operate as if the governor has declared an emergency pursuant to § 2 of Act 76 (3 L.P.R.A. 1932). Furthermore, any transactions, processes, projects, works or programs essential to the completion of a critical project shall continue to be processed and completed under such expedited permitting process, regardless of the termination of the Oversight Board under § 209. Upon receipt of a law, the Oversight Board shall promptly review whether the expedited permitting process, and, upon such a finding, the Oversight Board may deem such law to be significantly inconsistent with the applicable fiscal plan.
601(a): Creditor Collective Action	<ul style="list-style-type: none"> The Act does not make substantial changes from its previous version, but includes new definitions, such as "insured bond," "issuer," "secured pool," "senior claims" and "territory government issuer." <i>Note: The term "administrative supervisor" refers to the board.</i>
601(d): Determination of Pools for Voting	<ul style="list-style-type: none"> The Act provides that the administrative supervisor, in consultation with each issuer, shall establish pools according to the following principles: <ol style="list-style-type: none"> Not less than one pool shall be established for each issuer; A pool that contains one or more bonds that are secured by a lien on property shall be a secured pool; For each issuer that has issued multiple bonds that are distinguished by specific provisions governing priority or security arrangements, including bonds that have been issued as general obligations of the Commonwealth to which the Commonwealth pledged the full or good faith, credit and taxing power of the Commonwealth, separate pools shall be established corresponding to the relative priority or security arrangements of each holder of bonds against each issuer. Notwithstanding the foregoing, a pre-existing voluntary agreement may classify insured bonds and uninsured bonds in different pools and provide different treatment thereof so long as the pre-existing voluntary agreement has been agreed to by (1) holders of a majority in amount of all uninsured bonds outstanding in the modified pool; and (2) holders (including insurers with power to vote) of a majority in amount of all insured bonds.
601(f): Information Delivery Requirement	<ul style="list-style-type: none"> Before solicitation of acceptance or rejection of a modification, the issuer shall provide information, including the fiscal plan, if one has been certified with respect to such issuer, or such other information as may be required under applicable securities laws.
601(g): Qualified Modification	<ul style="list-style-type: none"> A modification is a qualifying modification if — <ol style="list-style-type: none"> The issuer proposing the modification has consulted with holders of bonds in each pool of such issuer prior to soliciting a vote on such modification; or The modification is certified by the administrative supervisor as being consistent with the requirements set forth in § 104(i)(1) and is in the best interests of the creditors and is feasible.
601(h): Solicitation	<p>Upon receipt of a certification from the administrative supervisor under the subsection, the information agent shall submit to the holders of any outstanding bonds of the relevant issuer information in order to solicit the vote of such holders to approve or reject the qualifying modification.</p>
601(i): Who May Propose a Modification	<p>For each issuer, a modification may be proposed to the administrative supervisor by the issuer by one or more holders of the right to vote on the issuer's outstanding bonds. To the extent that a modification proposed by one or more holders of the right to vote outstanding bonds, the administrative supervisor may accept such modification on behalf of the issuer.</p>
601(j): Voting	<ul style="list-style-type: none"> Requires two-thirds majority of the outstanding principal amount of the bonds in each pool. Note: In the case of those outstanding bonds that are insured bonds, the monoline insurer insuring such insured bond shall have the right to vote.
601(n): Judicial Review	<ul style="list-style-type: none"> The U.S. District Court for the District of Puerto Rico shall have original and exclusive jurisdiction over civil actions arising under this section. The district court shall nullify a modification and any effects on the rights of the holders of bonds resulting from such modification if and only if the district court determines that such modification is <i>manifestly inconsistent</i> with this section.
601(m): Binding Effect	<ul style="list-style-type: none"> A qualifying modification will be conclusive and binding on all holders of all series of bonds whether or not they have given such consent if — <ol style="list-style-type: none"> the holders of the right to vote the outstanding bonds in each pool of the issuer have consented to or approved the qualifying modification; and the administrative supervisor certifies that — <ol style="list-style-type: none"> the voting requirements of this section have been satisfied (that is, the modification obtained two-thirds of the votes); the qualifying modification complies with the requirements set forth in § 104(i)(1); and except for such conditions that have been identified in the qualifying modification as being non-waivable, any conditions on the effectiveness of the qualifying modification have been satisfied or, in the administrative supervisor's sole discretion, satisfaction of such conditions has been waived with respect to a bond claim that is secured by a lien on property and with respect to which the holder of such bond claim has rejected or not consented to the qualifying modification, the holder of such bond — <ol style="list-style-type: none"> retains the lien securing such bond claims; or receives on account of such bond claim, through deferred cash payments, substitute collateral, or otherwise, at least the equivalent value of the lesser of the amount of the bond claim or of the collateral securing such bond claim.
602: Applicable Law	<p>In any judicial proceeding regarding this title, federal, state or territorial laws of the U.S., as applicable, shall govern and be applied without regard or reference to any law of any international or foreign jurisdiction.</p>

Because of the general nature of this newsletter, nothing herein should be considered as legal advice or a legal opinion. For further information about the contents of this newsletter, or should you need further assistance in connection with these matters, please contact the firm's Bankruptcy Department.

Sonia Colón Colón, Esq. (scolon@ferraiuoli.com)
 Gustavo Chico Barris, Esq. (gchico@ferraiuoli.com)
 Camille Somoza Castello, Esq. (csomoza@ferraiuoli.com)